

GENERAL TERMS AND CONDITIONS

1. Term and Amount of Contract

The term of this contract, if applicable, shall be as stated on the face of the State's Purchase Order Forms, or Standard Agreement Form, subject to the availability of funds, unless terminated earlier by the State in accordance with the termination provisions contained in Paragraph 37. The maximum amount of this contract shall not exceed that amount stated on the face of the State's Purchase Order or Standard Agreement Form, payable solely from funds appropriated for the purpose of this contract. This amount may be changed during the term of this contract only by amendment to this contract. This contract is effective on the State's Purchase Order Date, or if a Standard Agreement Form is used, after signing by the Contractor and the contracting State agency, on the date of its last approval or certification of exemption from approval by or on behalf of the Director of Finance and the Director of General Services.

2. Amendments

Unless specifically prohibited by the solicitation document, which was the basis for this contract, this contract may be amended by mutual consent of the parties. An amendment shall not be effective until approved by the Director of General Services, or delegated representative, or until a certification of exemption from such approval has been signed by the contracting agency. No alteration or variation of the terms of this contract shall be valid unless made in writing, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

3. Definitions

- a. Acceptance Tests Those tests performed during the Performance Period as provided by Paragraphs 8 and 9, and by Rider D, which are intended to determine compliance of equipment with Contractor's published specifications and to determine the reliability of the equipment.
- b. Addition An augmentation to an existing equipment configuration consisting of a component and the necessary common equipment, and other miscellaneous equipment to make the new component function properly.
- c. Application Program A computer program which is intended to be executed on the Contractor's equipment for the purpose of performing useful work for the user of the information being processed. Application programs are usually developed or otherwise acquired by the user of the hardware/software system, but they may be supplied by the Contractor.
- d. Attachment The mechanical, electrical, or electronic interconnection to the Contractor-supplied component or system of equipment manufactured by other than the original equipment manufacturer and which is not connected by the Contractor.
- e. Cable A collection of more than twelve (12) pairs of insulated conductors in a common sheath.
- f. Catastrophic Loss of Service 1) any Attendant Console cannot place or receive calls; 2) a minimum of 25 percent of all telephone and data ports cannot place or receive calls; 3) a minimum of 25 percent of all trunks are inoperative; 4) a Contractor designed major attached application processor cannot send, receive, or retrieve information; or 5) a minimum of 25 percent of the trunks or agents supported by Centralized Attendant Service or Automatic Call Distribution applications are inoperative or cannot place or receive calls, respectively.
- g. Change An alteration to software feature such as class of service and call pickup.
- h. Component An individual unit of a telecommunications system or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and any necessary software.
- i. Conduit A tube or trough to protect cable or wire.
- j. Cutover The date and time the system is placed in service.
- k. Equipment An all-inclusive term which refers either to individual components or to a complete Telecommunications System or Subsystem.
- l. Equipment Alteration Any change to Contractor-supplied equipment which is not made by the Contractor, and which results in the equipment deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
- m. Equipment Failure A malfunction in the equipment, excluding all external factors, which prevents the accomplishment of the equipment's intended function(s). If microcode or operating software, residing in the equipment is necessary for the proper operation of the equipment, a failure of such microcode which prevents the accomplishment of the equipment's intended functions shall be deemed to be an equipment failure.

- n. **Expansion Facilities** Includes any cabinet/telephone equipment (except line cards and station cards) necessary to house and provide system operation (as identified in the technical specification of the solicitation) exceeding the equipped quantity level to the capacity level for each EK/HTS system.
- o. **Facility Readiness Date** The date specified in the contract by which the State must have the site prepared and available for equipment delivery and installation.
- p. **Good Working Order** Equipment and software will be deemed in good working order if it complies in all material respects with Contractor's and the State's specifications for that equipment and software, as set forth or referenced in Rider B and C.
- q. **Installation Date** The date specified in the contract by which the Contractor must have the ordered equipment ready (certified) for use by the State.
- r. **Installation Site** An installation complex consisting of one or more buildings within a specific place or geographical area as identified in the solicitation document. If the system is located at two or more non-contiguous areas and is in a distributed switching configuration, and it serves only one state agency, then the system shall be considered as one installation site.
- s. **Maintenance Diagnostic Devices** The diagnostic devices customarily used by the Contractor to test equipment for proper functioning and reliability.
- t. **Major Loss of Service** Any one or more of the following: (1) 10% or more of stations cannot originate outward calls or receive inward calls; or (2) complete loss of service to the system management processor; or (3) complete loss of service to all administrative consoles.
- u. **Minor Loss of Service** A failure of any component or part of a system or sub-system that does not interfere with the State Agency's normal conduct of business.
- v. **Move** Any change in location of a component or subsystem within the range of the network equipment at the same installation site(s).
- w. **Non-Terminal Equipment** For the purposes of Liquidated Damages, all equipment provided under this contract that is not defined as terminal equipment.
- x. **Operating Software** Those routines, whether or not identified as program products, that reside in the equipment and are required for the equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and application programs to the equipment.
- y. **Operational Use Time** For performance measurement purposes, that time (State holidays excluded) when equipment is available for actual operation by the State.
- z. **Performance Period** A period of time during which the State, by appropriate tests, evaluates the performance of newly installed equipment and software prior to its acceptance by the State.
- aa. **Period of Maintenance Coverage** The period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
- bb. **Preventive Maintenance** That maintenance performed on a scheduled basis by the Contractor, which is designed to keep the equipment operating according to the manufacturer's specifications.
- cc. **Principal Period of Maintenance** Any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
- dd. **Program Product** Programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- ee. **Relocation** Equipment moves from one installation site to another.
- ff. **Remedial Maintenance** That maintenance performed by the Contractor which results from equipment failure, (including operating software) and which is performed as required; i.e., on an unscheduled basis.
- gg. **Removal** The discontinuance of service and related equipment from a given location.
- hh. **Service** The labor involved in performing an installation, change, move, relocation, or removal of a component(s) by the Contractor.
- ii. **Software** An all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including operating software, programming aids, application programs, and program products.
- jj. **Software Failure** A malfunction in the Contractor-supplied software other than operating software, which prevents the accomplishment of work, even though the equipment (including its operating software) may still be capable of operating properly. For operating software failure, see definition of equipment failure.

- kk. Terminal Equipment For purposes of liquidated damages, terminal equipment includes all station equipment such as any type of single line, multi-line, emergency, outdoor, or elevator telephone and any attachments thereto including cords, speakerphones, automatic dialers, and line status indicators. Terminal equipment does not include attendant consoles or common equipment.
- ll. Telecommunications Subsystem (Subsystem) A complement of Contractor-furnished individual components, including the necessary controlling elements (or the functional equivalent), which are required to operate as an integrated group, and which are interconnected to public utility demarcation points or State-owned telecommunications facilities entirely by Contractor-supplied signal cables and wires.
- mm. Telecommunications System (System) The total complement of Contractor-furnished equipment, including all wiring, cable, terminating blocks, and software, which are required to operate as an integrated group, and which are interconnected to public utility demarcation points or State-owned telecommunications facilities entirely by Contractor-supplied signal cables and wires.
- nn. Wire A collection of twelve (12) or less pairs or insulated conductors in a common sheath, commonly used to connect one circuit to common equipment or a cross connect area.

4. Contractor Written Commitments

Any written commitment by the Contractor within the scope of this contract shall be binding upon the Contractor. Failure of the Contractor to fulfill any such commitment shall render the Contractor liable for liquidated or other damages due to the State. Such written commitments include (1) any warranty or representation made by the Contractor in the bid or proposal as to equipment or software performance, total system performance, or other physical design or functioning characteristics of a component or software system; (2) any warranty or representation made by the Contractor concerning the characteristics of the items described in (1) above, made in any publication, drawings, or specifications accompanying or referred to in the bid or proposal which pertains to the responsiveness of the bid or proposal to the solicitation document, and (3) any written notification of or affirmation or representation as to the above which is made by the Contractor in or during the course of negotiations and which is incorporated into a formal amendment to the proposal.

5. Site Preparation

- a. If the equipment to be installed requires special environmental considerations, Contractor shall provide site preparation specifications for equipment listed on Rider B within a reasonable time upon request by the State, unless such specifications have been included in the Contractor's bid or proposal. These specifications shall be in such detail as to ensure that equipment, if installed according to these specifications, shall operate efficiently, from an environmental point of view and properly from a functional point of view.
- b. The State may prepare a site plan showing the location of each item of equipment listed in Rider B and detailing the associated electrical power and environmental control facilities. If requested, the Contractor will review and comment on the adequacy of the State's plan, and shall be permitted free access subject to the security requirements for the site for this purpose. Alternatively, the Contractor may prepare the site plan, and will be permitted free access to the site for this purpose.
- c. The State shall cause the site to be prepared in accordance with the Contractor's written minimum site and environmental specifications, unless the Contractor has agreed to be responsible for such site preparation, on or before the Facility Readiness Date specified in Rider B.
- d. Any subsequent alterations or modifications to the site which are directly attributable to incomplete or erroneous specifications provided by the Contractor and which involve additional expense shall be made at the expense of the Contractor, to the extent that such costs would not have been incurred had the complete and/or correct specifications been initially provided.
- e. If any such site alterations as discussed in Paragraph 5d above, cause a delay in the installation, the provisions of Paragraph 7b shall apply.
- f. Unless mutually agreed to otherwise, arrangements for procurement, installation, and maintenance of noncontractor's communication media (telephone lines, modems, etc.) necessary for the remote transmission of data are the responsibility of the State. In addition, if requested by the Contractor, the State shall provide one telephone, with

appropriate coupling devices for the transmission of data, for the Contractor's use in installation and maintenance of the equipment. Any toll charges resulting from the use of this instrument by the Contractor in the installation and maintenance of the equipment will be borne by the Contractor.

6. Installation and Delivery Dates

a. Equipment (Hardware and Operating Software)

- 1) Except as otherwise provided in Paragraph 6a(7), the Contractor shall install equipment listed in Rider B ready for use on or before the Installation Dates specified in Rider B. Time is the essence of this agreement.
- 2) Installation Dates may be changed by mutual consent of the Contractor and the State by amendment to Rider B; however, consent of the Contractor is not required if, at least 90 days prior to the Installation Date, the State defers the installation of any component, but a new Installation Date will be established by mutual agreement. Such unilateral deferment shall not exceed 180 days, except by mutual agreement.
- 3) The State shall provide the Contractor access to the site for the purpose of installing equipment prior to the Installation Date. The Contractor shall specify in writing the time required to install the equipment.
- 4) Except as otherwise provided in Paragraph 6a(7), the Contractor shall determine that the equipment is ready for use, and operates in conformance with the Contractor's published specifications. The Contractor shall then certify in writing to the State that the equipment is installed and ready to be turned over to the operational control of the State. The Contractor shall also provide to the State appropriate documentation to support the above certification, at which time the State will accept control of the equipment for the purpose of validating its installation and performance.
- 5) Notwithstanding certification by the Contractor that the equipment has been installed and is ready for use, the equipment shall not be deemed installed within the terms of this contract until such installation is confirmed by the State through testing prescribed by the solicitation document or by performance of other suitable tests mutually agreed to by both parties as being adequate for this purpose. If the test is successfully completed, the equipment shall be deemed installed and ready for use as of the date of the Contractor's certification. The State shall immediately begin acceptance testing of the equipment in accordance with the provisions of Paragraph 8, and shall notify the Contractor in writing, within five (5) working days, that the State concurs that the equipment was installed. If the equipment fails to successfully complete the test, the Contractor shall be notified immediately of the failure, with written confirmation to be provided in not more than five (5) working days. Control of the equipment shall immediately be given to the Contractor. The equipment shall not be deemed to be installed until the Contractor re-certifies such installation and the above-described test is successfully completed.
- 6) Except as otherwise provided in Paragraph 6a(7), in the event the Contractor fails to install the equipment by the Installation Date, liquidated damages as prescribed in Paragraph 7 shall apply.
- 7) If the nature of the equipment is such that the services of the Contractor are not required for its installation, and the Contractor so states in writing and the State agrees in writing that such Contractor services are not necessary, the Contractor may ship the equipment to the State site. If the equipment arrives not later than five (5) working days prior to the Installation Date, the equipment shall be deemed to have been installed on or before the Installation Date and no liquidated damages shall be paid, irrespective to whether or not the State is successful in installing the equipment without Contractor assistance. If this procedure is used, the State shall make every reasonable effort to install the equipment prior to the Installation Date, and shall confirm such installation in accordance with the procedures set forth in Paragraph 6a(5) above, without requiring a certification of installation as set forth in Paragraph 6a(4) above by the Contractor. If, however, the State is unable to install the equipment, it shall notify the Contractor that Contractor assistance is required. The Contractor shall then assist in the equipment installation and certification that such installation has been accomplished.

b. Software (other than Operating Software)

- 1) The Contractor shall provide those programming aids, program products, and applications listed on Rider C, on or before the Delivery Dates specified in Rider C, and shall certify to the State that such software has been delivered and is ready for State use. For purposes of this Paragraph, "delivered" also means received by the State, if such software is mailed by the Contractor.
- 2) If, in the opinion of the Contractor, the services of the Contractor are required to install the software on the State equipment, "delivery" of the software, for the purposes of this contract, shall be deemed to include such installation services.

- 3) In the event, the Contractor fails to deliver the agreed-upon software by the dates specified, liquidated damages as prescribed in Paragraph 7 will apply.
- 4) During the period of this contract, when requested by the State, the Contractor shall furnish any additional software which it has developed or may develop at a future date for general use with the type of equipment listed on Rider B and which it furnishes to its customers generally, at the charges generally in effect at that time.

7. Liquidated Damages

a. General

The Installation Dates of the equipment set forth in Rider B and the Delivery Dates for software set forth in Rider B and C have been fixed so that the utilization of the equipment and software is consistent with the timing schedules of the State's programs. If any of the units of equipment, with all required operating software, are not installed within the times specified in Rider B, and/or if any of the other software is not delivered to the State within the time limits specified in Rider C, the delay will interfere with the proper implementation of the State's programs, to the loss and damage of the State. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The State and Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be the amounts set forth in Riders B and C, and the State and the Contractor agree that in the event of any such delay, the Contractor shall pay such amounts as liquidated damages and not as a penalty. Similarly, a unilateral deferment by the State of equipment installation without appropriate notice or a delay in readying the facility interferes with the installation schedule under which the Contractor is operating, thus resulting in damages to the Contractor. The State and Contractor presume that in the event of such delay, the amount of damage which will be sustained will be the amount set forth in Rider B, and they agree that in the event of such a delay, the State will pay such amount as liquidated damages and not as a penalty. Amounts due the State as liquidated damages may be deducted by the State from any money payable to the Contractor. The State shall notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date State deducts such sums from money payable to the Contractor.

b. Equipment Installation Delays Caused by the Contractor

- 1) If the Contractor does not install the equipment, (designated by the Contractor's type and model number), and special features included with the equipment (or suitable substitutes acceptable to the State), ready for use with all appropriate operating software, all as listed in Rider B, on or before the Installation Date(s) specified in Rider B, or in the case of the equipment described in Paragraph 6a(7) deliver to the State in time for State installation, the Contractor shall be liable for fixed liquidated damages specified in Rider B, in lieu of all other damages for such noninstallation. Liquidated damages shall accrue for each calendar day between the Installation Date specified in Rider B and the date the equipment is certified ready for use or 180 calendar days, whichever occurs first.
- 2) If some, but not all of the components are installed, ready for use, during a period of time when liquidated damages are applicable, and the State uses any such installed components, liquidated damages shall not accrue against the components used for any calendar day the components are so used.
- 3) If the delay is more than thirty (30) calendar days, then by written notice to the Contractor, the State may terminate the right of the Contractor to install, and may obtain substitute equipment, in accordance with the Rights and Remedies of the State for Default provision in this contract. In this event, the Contractor shall also be liable for liquidated damages, in the amounts specified above until substitute equipment is installed, ready for use, or for 180 days from the Installation Date, whichever occurs first.

c. Other Delivery Delays Caused by the Contractor

- 1) If the Contractor does not deliver all the programming aids, program products, and applications listed on Rider C ready for use in substantial accordance with the Contractor's specifications, on or before the Delivery Dates specified in Rider C, the Contractor shall be liable for liquidated damages in the amounts specified in Rider C, in lieu of all other damages for such nondelivery. Liquidated damages shall accrue for each calendar day between the Delivery Date specified and the actual date of the delivery of such software or for 180 days, whichever occurs first. If the Contractor fails to provide the software listed in Rider C by the specified Delivery Date, but provides suitable substitution of software acceptable to the State, liquidated damages shall not apply to listed software for which substituted software is provided.
- 2) If the State is unable to use the equipment on the Installation Date because Contractor failed to deliver the software listed in Rider C by the Delivery Date specified in Rider C, and Contractor does not furnish suitable

substitute software acceptable to the State, liquidated damages for equipment noninstallation as specified in Paragraph 7b(1) shall be paid to the State in lieu of damages for software nondelivery as specified in Paragraph 7c(1). Such liquidated damages shall apply until the State uses the equipment or until Contractor provides the programming aids or applications which would render the equipment usable, whichever occurs first, but not more than 180 calendar days.

d. Installation or Delivery Delays Caused by the State

- 1) In the event the equipment cannot be installed because the State has failed to prepare the facility by the Facility Readiness Date specified, the State shall be liable for fixed liquidated damages specified in Rider B for each day between the Facility Readiness Date specified in Rider B and the actual readiness date, but not to exceed 180 calendar days, in lieu of all other damages for such delay.
- 2) In the event a change directed by the State requires a later installation date of certain equipment and the State has failed to notify the Contractor of the delay at least 60 days prior to the original Installation Date, the State shall be liable, in lieu of all other damages, for liquidated damages as specified in Paragraph 7d(1) for each day between the original Installation Date and the new Installation Date, but not to exceed 180 calendar days.
- 3) The State shall not be liable for liquidated damages under both Paragraphs 7d(1) and 7d(2) during the same period of time with respect to the same equipment.

8. Acceptance Testing for Equipment (including Operating Software)

- a. Acceptance testing is intended to ensure that the equipment acquired operates in substantial accord with the Contractor's technical specifications, is adequate to perform as warranted by Contractor's response to the requirements of the State's solicitation document, and evidences a satisfactory level of performance reliability, prior to its acceptance by the State. If the equipment to be installed includes operating software as listed in Rider B, such operating software shall be present for the acceptance test unless substitute-operating software acceptable to the State is provided. Acceptance testing is required for all newly installed technology systems, subsystems, and individual equipment, and components which are added or field modified (modification of a component from one model to another) after a successful performance period.
- b. In accordance with Paragraph 6a(4), the Contractor shall certify in writing to the State when equipment is installed and ready for use, at which time operational control becomes the responsibility of the State. Acceptance testing shall commence on the first State workday following certification, and shall end when the equipment has met the standard of performance (performance criteria) as provided in Rider D for a period of 30 consecutive days. Operation of the equipment to confirm its installation, as provided in Paragraph 6a(5), shall be considered to be a part of the acceptance test.
- c. In the event the equipment does not meet the standard of performance during the initial 30 consecutive calendar days, the acceptance tests shall continue on a day-to-day basis until the standards of performance are met for 30 consecutive days.
- d. If the equipment does not meet the standards of performance within ninety (90) consecutive days after the start of the acceptance testing, the State shall have the option to request replacement equipment, extend the performance period or terminate the order (or portions thereof) and seek relief as provided the Rights and Remedies of State for Default provision in this contract. The State's option shall remain in effect until such time as the equipment meets the performance criteria, or 180 consecutive days after the start of the acceptance testing, whichever occurs first. If the equipment has not met the standards of performance by 180 days after installation, the contract shall be canceled or the defective equipment deleted from the contract and Paragraph 26 shall apply.
- e. At the request of the Contractor, the State shall make available not only the failed equipment, but also those components which must be utilized by the Contractor to identify the cause of failure and to accomplish the repair.
- f. Equipment shall not be accepted by the State and no charges associated with such equipment shall be paid by the State until the equipment has satisfactorily completed the acceptance tests. In addition, if required by Rider D, no charges shall be paid until specified Contractor-supplied software has been accepted by the State.

- g. Immediately upon successful completion of the acceptance tests, the State shall notify the Contractor in writing of acceptance of the equipment and authorize appropriate payment. The State shall maintain adequate daily records to satisfy the requirements of acceptance testing. Increments of time shall be measured in hours and whole minutes.
9. Acceptance Testing for Software (other than Operating Software)
- a. Acceptance testing is required for all Contractor-supplied software supplied under this contract and listed on Rider C, including all software initially installed, improved versions (new releases) of this software, any such software which has been altered (modified) by the Contractor to satisfy State requirements, and any substitute software provided by the Contractor in lieu thereof, unless Rider D provides otherwise. The purpose of the acceptance test is to ensure that the software operates in substantial accord with the Contractor's technical specifications and meets the State's performance specifications. The specific procedures for the accomplishment of such tests are contained in Rider D.
 - b. When software has been provided and certified in accordance with Paragraph 6b(1), the State shall begin acceptance testing on the first State workday following such certification, as provided in Rider D.
 - c. If successful completion of the acceptance test is not attained within ninety (90) consecutive days after the start of the acceptance testing, the State shall have the option to request substitute software, cancel that portion of the contract which relates to the unaccepted software, or continue the acceptance tests. The State's option shall remain in effect until such time as the tests are successfully performed, or 180 days after certification, whichever occurs first. If the acceptance tests have not been successfully performed prior to the expiration of 180 days, that portion of the contract which relates to the unaccepted software shall be canceled, unless both parties agree to the continuation of the tests or to the delivery of substitute software. If the unaccepted software (or its functional equivalent) is crucial to the accomplishment of the work for which the equipment was acquired, and is so identified in Rider D, the State shall have the option of terminating the entire contract in accordance with the Rights and Remedies of the State for Default provision in this contract.
 - d. Unless otherwise provided in Rider D, software shall not be accepted by the State and no charges associated with such software shall be paid by the State until the software has satisfactorily completed the acceptance tests.
 - e. Immediately upon successful completion of the acceptance testing, the State shall notify the Contractor in writing of the acceptance of the software and authorize appropriate payment. The State shall maintain adequate records to satisfy the requirements of acceptance testing.
10. Purchase Prices and Payment Schedules
- a. Purchase prices for equipment under this contract shall be shown in Rider B. The monthly cost to the State for installment payments, if applicable under this contract, shall be in accordance with the appropriate Payment Schedule(s) contained in Rider E. If the operating software is proprietary, the license for its use is contained in Rider G.
 - b. The consideration to be paid Contractor, as provided herein shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.
11. Use of Software and Basis for Payment
- All software, other than operating software to be delivered, with any charges for its use, are listed on Rider C. Each item of software which is proprietary in nature shall be licensed to the State for its use in accordance with the provisions of Rider G. Except as may be provided in Rider G, the State shall have unrestricted use of such software.
12. Maintenance of Equipment
- If the Contractor is responsible under this contract to maintain the equipment covered under this contract, the Contractor shall keep the equipment in good operating condition and shall always be responsive to the maintenance requirements of the State. Equipment maintenance shall be provided in accordance with the provisions of Rider A with the basic monthly maintenance charges, if any, listed in Rider B. Maintenance Services, other than those provided in accordance with Rider A, are outside the scope of this contract. The Contractor agrees, however, to make available for a minimum of 5 years after the installation date, adequate maintenance service.

13. Replacement Parts Availability

The Contractor shall indicate in Rider B, the number of years all replacement parts will be available beginning with the Installation Date. If replacement parts are not available after the expiration of the Rider B period, the Contractor, when requested by the State, will assist the State to arrange for its own support by providing the State with whatever documentation is available to Contractor, subject to the conditions and charges, if any, associated with such documentation.

14. Transportation and Installation

a. Transportation

- 1) Shipments to the installation site shall be the responsibility of the Contractor and shall be made by commercial carrier and by padded van or air freight in consideration for payment of the equipment destination (in) charges shown in Rider B. These charges are exclusive of rigging. If air shipment by commercial carrier is not specified by the State, shipment shall be made by padded van, or Contractor may, at its option, use a premium method of transportation (e.g., air freight), but the State shall pay only equipment destination charges shown in Rider B. Components shall be preserved, packed and marked in accordance with Contractor's standard practice.
- 2) When the State elects to specify air shipment by commercial carrier, written authorization for such method shall be furnished to the Contractor at least 30 days prior to the scheduled shipping date and the State shall pay the air freight charges in lieu of the equipment destination (in) charges shown in Rider B. The Contractor shall furnish copies of the freight bills to substantiate transportation charges billed by the Contractor to the State.
- 3) Transportation charges for the shipment of empty packing cases shall be paid by the Contractor except when equipment is moved from one State location to another.
- 4) Prior to acceptance of the equipment, the Contractor shall bear the cost of transportation, rigging, and/or drayage whenever equipment is shipped or moved for mechanical replacement purposes unless the replacement was due to fault or negligence by the State.
- 4) The State shall pay only those rigging costs incurred at the State's location unless otherwise agreed to between the State and the Contractor.

b. Installation

- 1) The State shall furnish such labor as may be necessary for unpacking and placement of equipment when in possession of the State.
- 2) Supervision of unpacking and placement of equipment shall be furnished by the Contractor during the Contractor's normal working hours without additional charge to the State.

15. Training and Technical Services

a. Training

Any training to be provided will be as stated in Rider H.

b. Technical and Other Personal Services Personal

Personal services to be provided by the Contractor to the State, if any, will be as stated in Rider I.

16. Invoices and Payments

a. Submission of Invoices

The Contractor shall render invoices in triplicate to the name and address listed on Rider A. Invoices for purchases and software fees are not due and payable until successful completion of any applicable acceptance testing. Invoices for services are not due and payable, and do not constitute an obligation of the State, until the month following the month for which charges accrue. Installment payments, if any, shall be in accordance with Rider E payment schedules.

b. Additional Charges

If additional charges for maintenance outside the Period of Maintenance Coverage are applicable, the State shall furnish the Contractor an Authorization to Bill, which shall contain sufficient information for the Contractor to compute appropriate charges. Such Authorization to Bill shall be submitted promptly following the end of the month covered by the authorization, and shall be based on appropriate records subject to joint review by the State and the Contractor at the request of either party.

c. Required Payment Date

Unless otherwise specified, payment will be made in accordance with Government Code Sections 927 et seq., as applicable. Payment shall not be due until the later of: (a) the date of acceptance of goods or performance of services; or (b) receipt of an accurate invoice.

17. Taxes

The State of California is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on the Contractor or on any taxes levied on employee wages. The State will only pay for any State or local sales or use taxes on the services rendered or equipment, parts or software supplied to the State pursuant to this contract.

18. Documentation

The Contractor agrees to provide to the State, at charges no more than those made by the Contractor to its other customers for similar publications, a number of all nonproprietary manuals and other printed materials, and updated versions thereof, which are necessary or useful to the State in its use of the equipment or software provided hereunder. The Contractor agrees to provide additional documentation at prices not in excess of charges made by the Contractor to its other customers for similar documentation. Rider A may provide additional information related to documentation.

If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on equipment purchased under this contract, then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant documentation to allow the State to maintain the equipment based on Contractor's methodology. The Contractor agrees that the State may reproduce such documentation for its own use in maintaining the equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license to use the above noted documentation, any other Contractor that the State may have hired to maintain the equipment. The State agrees to include the Contractor's copyright notice on any such documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.

19. Confidentiality of Data

All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this agreement, or which become available to the Contractor in carrying out this agreement, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this agreement, or is rightfully obtained from third parties.

20. Major Field Modifications

If the Contractor is responsible, under this contract, for the maintenance of equipment under this contract, the Contractor shall provide for on-site field modification of the equipment under the provisions of Rider F.

21. General Indemnity

The Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses, with the exception of consequential damages, accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by the Contractor in the performance of this contract which are attributable to the negligence or intentionally tortious acts of the Contractor provided that the Contractor is notified in writing within 30 days that the State has knowledge of such claims.

22. Patent, Copyright, and Trade Secret Protection

- a. The Contractor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the equipment or software supplied by the Contractor, or the operation of such equipment pursuant to a current version of Contractor-supplied operating software, infringes a United States patent, or copyright or violates a trade secret. The Contractor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:
 - 1) That the Contractor shall be notified within a reasonable time in writing by the State of any notice of such claim; and,
 - 2) That the Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense.
- b. Should the components or software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent, copyright or a trade secret, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using the components or software, or to replace or modify the same so that they become noninfringing and continue to meet bid specifications. If neither of these options can reasonably be taken, or if the use of such equipment or software by the State shall be prevented by injunction, the Contractor agrees to take back such equipment or software, and refund any sums the State has paid Contractor less any reasonable amount for use or damage and make every reasonable effort to assist the State in procuring substitute equipment or software. If, in the sole opinion of the State, the return of such infringing equipment or software makes the retention of other items of equipment or software acquired from the Contractor under this contract impractical, the State shall then have the option of terminating the contract, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such equipment or software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.
- c. The Contractor shall have no liability to the State under any provision of this Paragraph with respect to any claim of patent, copyright, or trade secret infringement which is based upon:
 - 1) The combination or utilization of components furnished hereunder with components or devices not made or furnished by the Contractor.
 - 2) The operation of components furnished by the Contractor under the control of any operating software other than, or in addition to, the aforementioned current version of Contractor-supplied operating software.
 - 3) The modification by the State of the components furnished hereunder or of the aforementioned software.
 - 3) The combination or utilization of software furnished hereunder with noncontractor's supplied software.
- d. The foregoing states the entire liability of the Contractor with respect to infringement of patents, copyrights and trade secrets.

23. Risk of Loss or Damage

The State shall be relieved from all risks of loss or damage to the equipment under this contract prior to installation as defined in the above Paragraph, "Installation and Delivery Dates," except when such loss or damage is due to fault or negligence of the State.

24. Contractor's Liability for Injury to Persons or Damage to Property

- a. The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the equipment either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
- b. Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Contractor's equipment.

25. Warranty

The Contractor warrants that all components purchased under this contract when installed will be in good working order and will conform to the Contractor's published specifications. If the Contractor is responsible to maintain the equipment under this contract, the Contractor will make all adjustments, repairs, and parts replacements necessary to maintain the components in this condition. Specific warranty provisions are as detailed in Rider A. All components are supplied subject to these warranties.

26. Rights and Remedies of State for Default

- a. In the event any equipment, software, or service furnished by the Contractor in the performance of this contract should fail to conform to the specifications therefore, the State may reject the same, and it shall thereupon become the duty of the Contractor to reclaim and remove the same forthwith, without expense to the State, and immediately to replace all such rejected equipment, software, or service with others conforming to such specifications; provided that should the Contractor fail, neglect or refuse to do so the State shall thereupon have the right to purchase in the open market, in lieu thereof, a corresponding quantity of any such equipment, software, or service and to deduct from any moneys due or that may thereafter become due to the Contractor the difference between the price named in this contract and the actual cost thereof to the State.
- b. In the event the Contractor shall fail to make prompt delivery as specified of any equipment, software, or service, the same conditions as to the rights of the State to purchase in the open market and to reimbursement set forth above shall apply, except as otherwise provided in the above Paragraph, "Force Majeure".
- c. In the event of the cancellation of this contract either in whole or in part, by reason of the default or breach thereof by the Contractor, any loss or damage sustained by the State in procuring any equipment, software or service which the Contractor therein agreed to supply shall be borne and paid for by the Contractor.
- d. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

27. Limitation of Liability

- a. The equipment shall be under State's exclusive management and control. The State agrees that the Contractor shall not be liable for any damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the components and programs, audit controls, operating methods, and office procedures, and for establishing all proper checkpoints necessary for the State's intended use of the components.'
- b. Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to the greater of \$200,000 or the purchase price stated herein for the specific components that caused the damages or that are the subject matter of or area directly related to the cause of action. In those instances where Contractor has failed to deliver components as called for by the contract, or components have been returned to Contractor for failure to pass an Applicable Acceptance Test, the Limitation of Liability provided above shall not limit any right to recover the 'Cost to Cover.' 'Cost to Cover' means the cost of procuring a component or components of equivalent (not greater) capability, function, and performance, less the Contractor's bid price.

The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the above Paragraph, entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Contractor's negligence. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this contract.

- c. State's liability for damages for any cause whatsoever and regardless of the form of action whether in contract or in tort, excluding negligence, shall be limited to the greater of \$200,000 or the purchase price stated herein for the specific components that caused the damage or that are the subject of or are directly related to the cause of action.
- d. In no event will either the Contractor or the State be liable for consequential damages even if notification has been given as to the possibility of such damages.

29. Contractor's Power and Authority

The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State hereunder harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this contract.

30. Title to Equipment

Unless otherwise specified in Rider A, title to the equipment shall remain in the Contractor assigns, if any, until such time as the full purchase prices, applicable taxes and interest charges, if any, are paid to the Contractor. Title to each component will be transferred to the State when its purchase price, taxes, and associated interest charges, if any, are paid. Title to a special feature installed on a component and for which only a single installation charge was paid shall pass to the State at no additional charge, together with title to the component on which it was installed.

31. Force Majeure

Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or governmental statutes or regulations superimposed after the fact. If a delay or failure in performance by the Contractor arises out of a default of its subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for damages of such delay or failure, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

32. Waiver of Breach

No term or provision of this contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by an individual authorized to so waive or consent. Any consent by either party to, or waiver of, a breach by the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for, any other breach or subsequent breach, except as may be expressly provided in the waiver or consent.

33. Conflict With Existing Law

The Contractor and the State agree that if any provision of this contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision. Should the offending provision go to the heart of the contract, the contract shall be terminated in a manner commensurate with the interests of both parties, to the maximum extent reasonable.

34. Assignment

This contract shall not be assignable in whole or in part without written consent of the State. It is the policy of the State of California to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the contract. The State does not normally object to the granting of assignments for financial purposes, provided that the original Contractor retains all of its responsibilities and obligations under the contract. In the event of any assignment hereunder to which the State has consented, each such assignment shall contain a provision that further assignments shall not be made to any third or subsequent party without any additional written consent of the State.

35. Governing Law

This contract shall be governed by and construed in accordance with the laws of the State of California.

36. Limitation of Actions

No action, regardless of form, arising out of this contract may be brought by either party more than two years after the cause of action has arisen, or in the case of nonpayment, more than two years from the date of the last payment, except where either party (within two years after a cause of action has arisen) provides the other party in writing a notice of a potential cause of action, disclosing all material facts then known by the notifying party concerning such

cause of action, then the notifying party may bring an action based on the matter so disclosed at any time prior to the expiration of four years from the time the cause of action arose.

37. Disputes

- a. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the contract, Contractor shall include with the demand a written statement signed by a senior company official indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the contract adjustment for which Contractor believes the State is liable. If the Contractor is not satisfied with the decision of the cognizant Department Director or designee, the Contractor may appeal the decision to the Department of General Services Deputy Director, Procurement Division.
- b. Pending the final resolution of any dispute arising under, related to or involving this contract, Contractor agrees to diligently proceed with the performance of this contract, including the delivery of goods or providing of services. Contractor's failure to diligently proceed shall be considered a material breach of this contract.
- c. Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division. If the State fails to render a final decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

38. Changes

The State may, any time, exclusively in a writing signed by the Department Director or designee, and without notice to sureties, make changes within the general scope of this Contract which affect the (a) drawings, designs or specifications; (b) method of shipment or packing; (c) place of inspection, delivery or acceptance; (d) delivery schedules; or (e) description of services to be performed; time of performance of services (i.e., hours of the day, days of the week, etc.); or place of performance of services.

If any such change causes an increase or decrease in the cost of, or the time required for, performance of this Contract, an equitable adjustment shall be made in the contract price or delivery schedule or both, and the Contract shall be modified in writing accordingly. Any request by Contractor for adjustment under this provision must be asserted in writing to the Department Director or designee not later than thirty (30) days after the date of receipt by Contractor of written change authorization, or within such extension as the State may grant in writing. The State may, in its sole discretion, consider any such request regardless of when asserted. Pending any such adjustment, Contractor will diligently proceed with the Contract as modified. Where the cost of property made excess or obsolete as a result of the change is included in Contractor's request for contract adjustment, the State shall have the right to direct the manner of disposition of such property. The State shall have the right to require the submission of supporting cost data and/or to inspect Contractor's pertinent books and records for the purpose of verifying Contractor's request and determining the basis for entitlement to an adjustment.

Contractor's request for contract adjustment shall be in the form of a complete change proposal fully supported by factual information and shall separately identify all increases and all decreases in costs. The request shall be submitted by a senior official authorized to bind the Contractor in a signed writing that contains the following certification statement: "I certify that the request is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief and that the amount requested accurately reflects the contract adjustment for which (insert Contractor's name here) believes the State is liable."

39. Termination of Contract: Non-Availability of Funds

- a. If the term of this contract extends into fiscal years subsequent to that in which it is approved, such continuation of the contract is subject to the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected equipment and software furnished under this contract, terminate any services supplied to the State under this contract, and relieve the State of any further obligation therefore.
 - b. State agrees that if the provisions of the Paragraph above are invoked, equipment shall be returned to Contractor in substantially the same condition in which it was delivered to the State, subject to normal wear and tear. State further agrees to pay for packing, crating, transportation to Contractor's nearest facility and for reimbursement to the Contractor for expenses incurred for their assistance in such packing and crating.
40. Termination for the Convenience of the State
- a. The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part if the Department Director or designee determines that a termination is in the State's interest. The Department Director or designee shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof. The parties agree that, as to the terminated portion of the contract, the contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the contract shall not be void.
 - b. After receipt of a Notice of Termination, and except as directed by the Department Director or designee, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
 - 1) Stop work as specified in the Notice of Termination.
 - 2) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
 - 3) Terminate all subcontracts to the extent they relate to the work terminated.
 - 4) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification of which will be final for purposes of this clause.
 - 5) As directed by the Department Director or designee, transfer title and deliver to the State (a) fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (b) completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the State.
 - 6) Complete performance of the work not terminated; and
 - 7) Take any action that may be necessary or as the State may direct for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the State has or may acquire an interest and to mitigate any potential damages or requests for contract adjustment or termination settlement to the maximum practical extent.
 - c. At the completion of the Contractor's termination efforts, the Contractor may submit to the Department Director or designee a list, indicating quantity and quality of termination inventory not previously disposed of, and request instruction for disposition of the residual termination inventory.
 - d. After termination, the Contractor shall submit a final termination settlement proposal to the Department Director or designee in the form and with the certification prescribed by the Department Director or designee. The Contractor shall submit the proposal promptly but no later than ninety (90) days from the effective date of termination, unless extended in writing by the State upon written request of the Contractor within the ninety (90) day period. However, if the Department Director or designee determines that the facts justify it, a termination settlement proposal may be received and acted on after the expiration of the filing period or any extension. If the Contractor fails to submit the proposal within the time allowed, the Department Director or designee may determine on the basis of information available, an equitable adjustment amount, if any, due the Contractor because of the termination and shall pay the amount determined.
 - e. The Contractor and the State may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done, including a reasonable

amount for accounting, legal, clerical and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data; and storage, transportation and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. However, the agreed amount may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount.

- f. If the Contractor and the State fail to agree on the whole amount to be paid because of the termination of work, the State shall pay the Contractor the amounts determined by the State as follows, but without duplication of any amounts agreed on as set forth above:
 - 1) The contract price for completed supplies or services accepted by the State (or sold or acquired) not previously paid for, adjusted for any saving of freight and other charges.
 - 2) The total of:
 - a) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid; and
 - b) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and
 - c) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- g. Except for normal spoilage, and except to the extent that the State expressly assumed the risk of loss, the State shall exclude from the amounts payable to the Contractor, the fair value, as determined by the Department Director or designee, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the State or to a buyer.
- h. The Contractor shall use generally accepted accounting principles and sound business practices in determining all costs claimed, agreed to, or determined under this clause. Such costs shall be allocable to the terminated contract or portion thereof, allowable under applicable laws, regulations, generally accepted accounting principles and good business judgment and objectively reasonable.
- i. The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the State; except that if the Contractor failed to submit the termination settlement proposal within the time provided and failed to request a time extension, there is no right of appeal. If the Department Director or designee has made a determination of the amount due, the State shall pay the Contractor (1) the amount determined if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on appeal. Following any attempted administrative resolution with the Department Director or designee, the Contractor may proceed in accordance with the Disputes clause of the contract.
- j. In arriving at the amount due the Contractor under this clause, there shall be deducted:
 - 1) All payments to the Contractor under the terminated portion of this contract;
 - 2) Any claim which the State has against the Contractor under this or any other contract;
 - 3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the State.
- k. If the termination is partial, the Contractor may file a proposal with the Department Director or designee for an equitable adjustment of the price(s) of the continued portion of the contract. The Department Director or designee shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 30 days from the effective date of termination unless extended in writing by the Department Director or designee.
- l. The State may:
 - 1) Under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the State believes that total of these payments will not exceed the amount to which the Contractor will be entitled.
 - 2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the State upon demand, together with interest computed at the rate established by the California Treasurer's

Pooled Money Investment Fund Rate. Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the State because of the circumstances.

- m. In determining the amount payable to the Contractor and notwithstanding any other provision, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the State shall allow no profit and shall reduce the settlement to reflect the indicated rate of loss.
- n. Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for three years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the State, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the State, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

41. Stop Work

- a. The State may, at any time, by written stop work order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
 - 1) Cancel the stop work order; or
 - 2) Terminate the work covered by the stop work order as provided for in the termination for default or the termination for convenience clause of this contract.
- b. If a stop work order issued under this clause is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the contract shall be modified, in writing, accordingly, if:
 - 1) The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
 - 2) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this contract.
- c. If a stop work order is not canceled and the work covered by the stop work order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.
- d. If a stop work order is not canceled and the work covered by the stop work order is terminated for default, the State shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.
- e. An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop work order under this clause. The State shall not be liable to the contractor for loss of profits because of a stop work order issued under this clause.

42. Assignment of Antitrust Actions

The following provision of Government Code Section 4552, 4553, and 4554 (Statutes of 1978, Ch. 414) shall be applicable to the Contractor.

"In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under section 4 of the

Clayton Act (15 U.S.C. sec. 15) or under the Cartwright Act [Chapter 2 (commencing with section 16700) of part 2 of division 7 of the Business and Professions Code], arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder."

"If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery."

"Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action."

43. Covenant Against Gratuities

The Contractor warrants by signing hereon that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the contract or securing favorable treatment with respect to any determinations concerning the performance of the contract. For breach or violation of this warranty, the State shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

44. National Labor Relations Board Certification

By signing hereon the Contractor swears under penalty of perjury that no more than one final, unappeasable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.

45. Statement of Compliance

The Contractor's signature affixed hereon and dated shall constitute a certification under the penalty of perjury under the laws of the State of California that the Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 (a-f) and Title 2, California Code of Regulations, Section 8103.

46. Examination and Audit

Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this contract.

47. Drug-Free Workplace Certification

By signing this contract the Contractor or grantee hereby certifies under penalty of perjury under the laws of the State of California the Contractor or grantee will comply with the requirements of the Drug-Free Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)

- b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and
 - 3) penalties that may be imposed upon employees for drug abuse violations.

- c. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed contract:

- 1) will receive a copy of the company's drug-free policy statement; and,
- 2) will agree to abide by the terms of the company's statement as a condition of employment on the contract.

Failure to comply with these requirements may result in suspension of payments under the contract or termination of the contract or both and the Contractor or grantee may be ineligible for award or any future state contracts if the department determines that any of the following has occurred: (1) the Contractor or grantee has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

48. Year 2000 Compliance

The contractor warrants that its hardware, software, and firmware products and/or services delivered under this contract shall be able to accurately process date data (including, but not limited to, calculating, comparing, and/or sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date data with it. This warranty is subject to the warranty terms and conditions of this contract. Nothing in this warranty shall be construed to limit any rights or remedies the State may otherwise have under this contract with respect to defects other than Year 2000 performance.

49. Cost or Pricing Data

At all times during and following the period of contract performance, the State may require contractor to furnish such cost and pricing data as the State deems necessary to assess the reasonableness of contract pricing, including the reasonableness of changes.

50. Forced, Convict and Indentured Labor

In accordance with PCC Section 6108, contractor warrants that no foreign-made equipment, materials, or supplies furnished to the State pursuant to this contract are produced in whole or in part by forced labor, convict labor, or indentured labor.

51. Recycling

Contractor hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods, supplies offered, or products used in the performance of this contract meet or exceed the minimum percentage of recycled material as defined in Section 12161 and 12220 of the PCC.

52. Child Support Compliance Act

For any contract in excess of \$100,000, the contractor acknowledges in accordance with PCC Section 7110, that:

- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

53. Americans with Disabilities Act

Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)